

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH D. ARCURI,	§	
	§	No. 473, 2011
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	
	§	Cr. A. No. IN11-03-1471
Plaintiff Below,	§	Cr. I.D. No. 1103005933
Appellee.	§	

Submitted: July 5, 2012

Decided: July 26, 2012

Before **HOLLAND, BERGER, JACOBS** and **RIDGELY**, Justices and **STRINE**,
Chancellor,* constituting the Court *en Banc*.

Upon appeal from the Superior Court. **AFFIRMED.**

Joseph A. Hurley, Esquire, Wilmington, Delaware, for Appellant.

Maria T. Knoll, Esquire, Department of Justice, Wilmington, Delaware, for Appellee.

BERGER, Justice:

*Sitting by designation pursuant to art. IV, § 12 of the Delaware Constitution and Supreme Court Rules 2 and 4 (a) to fill up the quorum as required.

In this appeal we consider whether the affidavit filed in support of a search warrant supported a magistrate's finding of probable cause. The affidavit describes a confidential source as "past proven and reliable" without explaining the basis for that statement. In addition, the affidavit describes the activities of a "drug detection K-9," but it does not state that the dog was trained and certified. Notwithstanding these omissions, the totality of the circumstances support the magistrate's decision authorizing the search warrant. Accordingly, we affirm.

Factual and Procedural Background

In March, 2011, Detective Robert Cassidy was working in the Delaware State Police Drug Unit. A confidential source (CS) told Cassidy that Joseph D. Arcuri was selling marijuana in New York and Delaware. After the CS identified Arcuri's picture (from a website and his driver's license), the CS told Cassidy that Arcuri had more than five pounds of marijuana in his hotel room and his van. The CS said that Arcuri and another man were staying in room 256 of the Doubletree Hotel, 4727 Concord Pike, Wilmington, Delaware. The CS also described Arcuri's van as a 2001 Dodge Caravan with New York license plate number CAL4399.

Cassidy contacted Wilmington Police Corporal Vitale, who brought Kai, his drug detection dog, to the Doubletree Hotel. When Vitale walked Kai past room 256, the dog had a positive reaction for the presence of drugs. Kai again alerted to the

presence of drugs when he walked around the Dodge Caravan.

Based on this information, Cassidy applied for and received a search warrant on March 7, 2011. He executed the search the same day, and found marijuana in the hotel room and the van. Arcuri was arrested and charged with possession with intent to deliver marijuana, and related drug offenses. The Superior Court denied his motion to suppress, and held a stipulated non-jury trial on August 18, 2011. Arcuri was convicted of possession with intent to deliver and the other charges were dismissed. This appeal followed.

Discussion

Arcuri argues that Cassidy's affidavit did not include sufficient information to support a finding of probable cause. The governing law is settled:

An affidavit submitted in support of a search warrant application must set forth facts that, within the affidavit's four corners, are sufficient for a neutral magistrate to conclude that a crime has been committed and that the property sought to be seized would be found in a particular place. In determining whether probable cause exists, the magistrate must apply a totality of the circumstances test to decide if there is a fair probability that contraband or evidence of a crime will be found in a particular place. In so doing, the magistrate may draw reasonable inferences from the affidavit's factual allegations.

This Court reviews a magistrate's determination of probable cause with great deference Although this Court will not simply rubber stamp a magistrate's conclusions, our review need only ensure that the magistrate had a substantial basis for finding that probable cause

existed.¹

As the trial court noted, Cassidy's affidavit was not as specific as it might have been. It does not include any facts explaining the conclusory statement that the CS was "past proven reliable," and it does not provide any evidence that Kai is a properly trained, reliable, drug detection dog. It would be better practice to include a brief statement about the accuracy of the CS's past tips, and to describe Kai as a "certified" or "fully trained" drug detection dog. But an affidavit of probable cause does not have to be perfect.

This affidavit provides more than enough information to justify the magistrate's decision. First, the CS was not an anonymous tipster. The CS had prior dealings with the police department, and met with Cassidy to confirm, by photo identification, that Arcuri was the claimed drug dealer. Second, the CS's information was very specific, and Cassidy confirmed it by going to the hotel and finding the van in the parking lot. Third, Cassidy's affidavit indicated he called a specific officer of another police force, Corporal Vitale of the Wilmington Police, and asked him to bring his dog to help with an investigation. Because Cassidy was a narcotics officer and contacted a specific officer of another police force to help him confirm the CS's tip, it is inferable that he contacted Corporal Vitale because Corporal Vitale was a

¹*Rivera v. State*, 7 A.3d 961, 966-67 (Del. 2010) (Internal quotation marks and citations omitted).

narcotics officer who worked with a dog trained to detect narcotics. Likewise, because Kai was Corporal Vitale's police dog, it is inferable that Kai was trained to detect narcotics.² Kai's alert for drugs at the van and the specified hotel room confirmed the CS's information, and provided independent support for the probable cause determination.

Conclusion

Based on the foregoing, the judgment of the Superior Court is affirmed.

²*See U.S. v. Rivera*, 347 F. App'x 833, 837-38 (3^d Cir. 2009).